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J. Peter Bragg

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)
)
NORCOM COMMUNICATIONS)
CORPORATION)

WTB DOCKET No.: WT 98-181

Volume 1

Pages: 1 through 15
Place: Washington, D.C.
Date: January 7, 1999

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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

NORCOM COMMUNICATIONS)	WTB Docket No. 98-181
CORPORATION)	
Business Radio Station License)	
WNQF836 SMR Radio Stations WZA770,)	
WNBW505, WNAJ380, WNRU218 and)	
WNJU965 New York, New York/)	
Long Island Area)	
Application to Modify Business)	File Number A008053
Radio Station License WNQF836,)	
New York, New York/Long Island Area)	
Application to Modify SMR Radio)	File Number C002479
Station License WZA770, New York,)	
New York/Long Island Area)	
Application to Modify SMR Radio)	File Number C002480
Station License WNBW505, New York,)	
New York/Long Island Area)	
ASSOCIATION FOR EAST END LAND)	
MOBILE COVERAGE)	
Business Radio Station License)	
WPAT918 New York, New York/)	
Long Island Area)	
LMR 900 ASSOCIATION OF SUFFOLK)	
Business Radio Station License)	
WNXT323 New York, New York/)	
Long Island Area)	
METRO NY LMR ASSOCIATION)	
Business Radio Station License)	
WPAZ643 New York, New York Area)	
NY LMR ASSOCIATION)	
Business Radio Station License)	
WPAP734 New York, New York/)	
Long Island Area)	
WIRELESS COMMUNICATIONS)	
ASSOCIATION OF SUFFOLK COUNTY)	
Business Radio Station License)	
WPAT910 New York, New York/)	
Long Island Area)	

TW-A402, Courtroom B
FCC Portals Building
445 - 12th Street, N.W.
Washington, D.C. 20554

Thursday
January 7, 1999

Heritage Reporting Corporation
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The parties met at 9:05 a.m., pursuant to the notice of the Judge.

BEFORE: HON. JOHN M. FRYSIAK
Administrative Law Judge

APPEARANCES:

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JUDGE FRYSIK: -- Docket Number 98-181. May we
appearances for the record?

MR. FOX: Good morning, Your Honor. I'm Russell
this is Russ Taylor. We're from Gardener, Carton &
and we represent Norcom Communications.

MS. LANCASTER: Good morning, Your Honor. My name is Judy Lancaster, and with me is Tom Fitz-Gibbon, and we represent the FCC Wireless Bureau.

JUDGE FRYSIK: All right. Thank you all. All I have on the agenda today is setting hearing dates, procedural dates. As far as the hearing is concerned, I was thinking of March 23rd. How does that suit you all?

MR. FOX: The date appears fine, although we're -- we would like to ask today, Your Honor, that we hold setting it in abeyance for several reasons, one, because we're filing today a motion for permission to appeal your order released yesterday on the issue of standards for transfer of control of private mobile-radio systems. And we think it would be a more efficient administration of the Commission

1 resources to have you rule on this and if it goes that far,
2 have the Commission to rule on this issue before we set the
3 hearing date. And there are several other matters which we
4 would ask to be taken care of before we set the hearing
5 date. If you like, I can address those now.

6 JUDGE FRYSIK: Well, please do.

7 MR. FOX: Thank you. One is that we are prepared,
8 pursuant to Section 1.248(c)(7) of the rules, to enter into
9 settlement discussions with the Wireless Bureau. We have
10 made entreaties to the Bureau before, but they have rejected
11 those entreaties, and we would like to ask you to direct the
12 Bureau to enter into settlement negotiations with us.

13 And we would like an opportunity to have those
14 negotiations before we set discovery and ultimately come up
15 with a date for the prehearing conference. So we would like
16 an opportunity to stipulate as to the facts with the Bureau,
17 and that hasn't yet occurred.

18 And we also have an outstanding application for
19 review, pending before the FCC on a FOIA decision, which has
20 not yet been resolved, and the facts that we expect to be
21 able to get pursuant to that FOIA request will be
22 instrumental in our case.

23 JUDGE FRYSIK: The Bureau?

24 MS. LANCASTER: Yes, Your Honor. We have not
25 spoken with -- since I have, at least, been on this case,

1 which is after it was designated for hearing, I have not
2 received any entreaties towards or any -- we've not had any
3 discussion towards settlement with Norcom. I don't know
4 that we're opposed -- we're not opposed to talking to them.
5 I think we have a problem in this case, in that I believe
6 that there is a rule that when you have a basic qualifying
7 issue about the parties' qualifications, it's difficult to
8 enter into a settlement of the case, and that's kind of a
9 problem for us, but we certainly have no problems in
10 discussing it with Norcom.

11 We've had some limited discussions with the
12 associations, very brief, and so far have not come to any
13 type of agreement. The problem that we have as far as
14 waiting for the application for review to become complete
15 and ruled upon, we have no idea when that will be. I mean,
16 we have no control over when the Commission will rule on
17 that, and that could basically put this trial or hearing off
18 indefinitely almost. And so I do have a problem with using
19 that as a standard for delaying the setting of the hearing.

20 On the other hand, Your Honor, I don't believe we
21 have had some discussions on when we think the hearing would
22 be appropriate, when we could finish all the discovery, et
23 cetera, that needs to be done in this case, and I don't
24 believe we're going to be able to get it completed by March.
25 So, you know, I don't know that we have a definite opinion

1 as to whether you want to delay setting the hearing date. I
2 don't necessarily have a problem with that. I don't want to
3 use the FOIA as -- you know, the pending FOIA, as the rule
4 that we can't do anything until that's completed because
5 that could take six months from now or more.

6 JUDGE FRYSIAK: Well, I certainly would like to
7 have a schedule. I mean, we've got to aim for something.
8 So I would definitely -- I'm inclined to set procedural
9 dates and, if need be in the future, address that situation
10 again. So you always create a file in motions one way or
11 the other. Well, let's then delay it a month still. I
12 thought March 23rd. What about April, more or less, 23rd?
13 I failed to bring a calendar with me. What is April 23rd?
14 Is that a --

15 MR. FOX: April 23rd, Your Honor, falls on a
16 Friday.

17 MS. LANCASTER: It's on a Friday. Your Honor, if
18 I might address this, we sat down with -- obviously I've not
19 tried -- had a hearing over here. I'm relatively new to the
20 FCC, but I did sit down with some of the other attorneys in
21 our office, and we tried to determine how long it would take
22 to complete the interrogatories and the depositions, et
23 cetera, and then to do the direct case exchange.

24 We feel that we're probably just not going to get
25 through all of that, particularly if there are any

1 objections to interrogatories, although coming from private
2 practice, I don't see that very often, but my understanding
3 is that in FCC cases that's pretty common. We don't feel
4 that there is any way that we're going to get through with
5 all that before some time, at least, in May. And I can give
6 you a rundown on how we came up with these times.

7 JUDGE FRYSIAK: You're thinking of depositions as
8 well as interrogatories, aren't you?

9 MS. LANCASTER: Yes, sir.

10 JUDGE FRYSIAK: Well, that's a lot faster, isn't
11 it?

12 MS. LANCASTER: Well, part of the problem, Your
13 Honor, is we really don't want to do the depositions until
14 we get the responses to the interrogatories. And we're
15 hoping the interrogatories will go out this week. I was
16 working on them yesterday when my computer crashed, so I
17 wasn't able to work on them at all hardly yesterday
18 afternoon. And I hope the computer is working today, but
19 the whole network down, is my understanding.

20 So we really don't want to designate and to serve
21 notices, and, you know, it takes 21 -- we have to give them
22 21 days before you can take their deposition, and we really
23 would like to get the responses to interrogatories prior to
24 determining who we need to depose. A lot of it is going to
25 depend on how they answer the written discovery.

1 JUDGE FRYSIK: Okay. Let's push it another
2 month, May 23rd or so.

3 MS. LANCASTER: May 24th is a Monday, Your Honor.

4 JUDGE FRYSIK: All right. May 25th. I'd like to
5 start on a Tuesday. May 25th. Is that all right with
6 everybody? So far. Right?

7 MR. PETRUTSAS: So far.

8 JUDGE FRYSIK: All right. Then we will require
9 you to notify witnesses for cross-examination a week before
10 that. That would then give you -- where are we? -- the
11 18th, May 18th, and the week before that for the exchange of
12 exhibits would be May 11th. Okay. So the three days, then,
13 that I have is the date for filing the exchange of exhibits
14 is May 11th, the filing notifications of witnesses for
15 cross-examinations May 18th, and the hearing in Washington
16 on May 25th.

17 So, of course, all of this is subject to change,
18 although we're going to have to get rid of this case. It
19 just won't walk away.

20 Is there anything else I can help you with?

21 MR. FOX: As I said, Your Honor, we're going to
22 give you, because we've said we are serving by hand this
23 motion for permission to appeal the decision issued
24 effective yesterday. And we would also ask your assistance
25 in directing the Bureau to enter into negotiations so that

1 we can potentially forego this trial. Counsel for the
2 Bureau said that she was unaware of any entreaties. I did
3 speak telephonically --

4 JUDGE FRYSIK: The Bureau said what?

5 MR. FOX: The counsel for the Bureau was unsure of
6 the entreaties we made, but I did speak to Mr. Schonman of
7 the Enforcement Bureau the day after the hearing designation
8 order was issued, and he at that time didn't appear willing
9 to cooperate, and I appreciate that the issue of basic
10 character qualifications, the Bureau did enter into an
11 agreement with SCANA Corporation just on December 22nd on
12 very similar issues. So I think the Bureau has certainly
13 shown a willingness to negotiate on these very similar
14 issues.

15 MS. LANCASTER: Your Honor, I have no problems
16 with us sitting down and discussing this. I don't think we
17 need an order from you for us to do that. I'm perfectly
18 willing to do that.

19 JUDGE FRYSIK: All right.

20 MR. PETRUTSAS: Your Honor, I'd like to notify you
21 of a couple of things. Two of the associations, and I'll
22 mention them, have decided to withdraw from the hearing, to
23 withdraw their appearances, and waive hearing, and then
24 eventually they intend to surrender the license for
25 cancellation day. This is simply too much for them. It's

1 too expensive, and I will file a written notification that
2 they withdraw their appearances, but for the record let me
3 mention them now. And that is, one of them is the Wireless
4 Communications Association of Suffolk County and the Metro
5 New York LMR Association. They are withdrawing their
6 appearances, and they will waive the right to a hearing.

7 JUDGE FRYSIK: All right. Well, if there is
8 nothing further, we will stand adjourned and recess until --

9 MR. PETRUTSAS: I wonder, Your Honor, and I'm not
10 too knowledgeable about the procedures here, but for
11 discovery purposes, I wonder whether you can direct or the
12 Bureau can consent to give us the names of the witnesses
13 that they plan to use and the substance of their testimony
14 so we can prepare how to respond to that. The Association
15 said -- responsible for two issues on which the Bureau has
16 the burden of proceeding and the burden of proof. And,
17 frankly, we don't know how to prepare for the defense unless
18 we know who the witnesses are and what they plan to testify.
19 And the sooner the better.

20 JUDGE FRYSIK: You're going to have to go through
21 discovery, I guess, first to determine, and then you will
22 have the notification of witnesses for cross-examination.

23 MR. PETRUTSAS: But the notification will be a
24 week ahead of time, and I'm not so sure that will give us
25 enough time to --

1 JUDGE FRYSIK: By that time you will have an idea
2 of what the case is all about by that time. I don't know
3 whether --

4 MR. PETRUTSAS: Let me ask --

5 JUDGE FRYSIK: -- ought to give you what
6 witnesses it's going to use. The Bureau won't know until
7 the last minute.

8 MS. LANCASTER: That's correct, Your Honor. At
9 this point, we don't know. Until we complete some
10 discovery, I can't even begin to respond to that request.

11 JUDGE FRYSIK: All right.

12 MR. FOX: If I can be of help in any way down the
13 line, why, you know, give us a call, motion-wise; and we'll
14 see what we can do.

15 MS. BAVENDER: Your Honor, I also wonder if the
16 Bureau, when they will foresee which parties would be
17 submitting direct exhibits.

18 MS. LANCASTER: A direct case?

19 MS. BAVENDER: A direct case.

20 MS. LANCASTER: The Bureau -- I mean, the Wireless
21 Bureau --

22 MS. BAVENDER: Right.

23 MS. LANCASTER: -- each of the parties here will
24 submit a direct case, is my understanding.

25 MS. BAVENDER: Right. But do you have any

1 particular employees who will be submitting a direct case?

2 MS. LANCASTER: The two of us sitting at this
3 table.

4 MR. FOX: The Bureau submits the direct case.

5 MS. BAVENDER: But -- an investigator or anybody
6 along those lines? That's, I think, what we're sort of
7 getting at, if there are any not so much witnesses --

8 JUDGE FRYSIK: Well, we normally proceed with
9 canned testimony. That's the exhibits --

10 MS. BAVENDER: Right.

11 JUDGE FRYSIK: -- that the Bureau will have to
12 produce. If you have any exhibits that you have by way of
13 retort, rebuttal, why, you should consider exchanging them
14 on the 18th of May on the scheduled date. There is no
15 burden on you except a burden on Norcom to show its
16 qualifications to remain a licensee. You have that burden.

17 MR. PETRUTSAS: No, sir.

18 MR. FOX: I think only for the pending
19 applications, not for --

20 JUDGE FRYSIK: I didn't hear you. What?

21 MR. FOX: Only for the pending applications the
22 Bureau has the burden of proof and the burden of going
23 forward on the revocation of the existing licenses.

24 JUDGE FRYSIK: Well, I see the second-to-last
25 paragraph, paragraph 17, places on you, on Norcom, and it

1 says the 12F -- what it means is the 13F.

2 MR. FOX: 12F applies only to pending
3 applications.

4 JUDGE FRYSIK: -- to determine upon the
5 evidence -- whether the application should be granted. So
6 that's what you had in mind. Right?

7 MR. FOX: Right. That's only the pending
8 applications, of which there are only --

9 MR. PETRUTSAS: -- two or three.

10 MR. FOX: -- two or three.

11 JUDGE FRYSIK: Okay. Well, all right. Good luck
12 and stay in touch. I'll see you, I guess, on the 25th of
13 May.

14 MS. LANCASTER: Your Honor, if I may bring up one
15 other subject, since counsel did not bring it up. I believe
16 in an earlier motion filed by Mr. Fox he requested that
17 Norcom be allowed to serve notice -- request for admissions
18 or some discovery upon us --

19 JUDGE FRYSIK: Ten days, yes.

20 MS. LANCASTER: -- and it was not addressed in
21 your order, and it's certainly the Bureau's position that it
22 is untimely at this point, and I just wondered if that was
23 still outstanding, if you had --

24 JUDGE FRYSIK: Well, I thought I gave him
25 permission to file -- ten days from the date of my order,

1 which I filed two days ago. So you have eight days running.
2 Right?

3 MR. FOX: Right.

4 MS. LANCASTER: Okay. I did not see it in your
5 order. It said "requests" plural, but in the same paragraph
6 you were talking about the request for extensions on --

7 JUDGE FRYSIK: Well, that's what I meant. I
8 meant to give you an extension.

9 MS. LANCASTER: Okay. I wanted to make sure I
10 understood what you had ruled.

11 JUDGE FRYSIK: Okay. Thank you very much. We
12 stand adjourned.

13 (Whereupon, at 9:25 the hearing was adjourned, to
14 be reconvened on May 11, 1999.)

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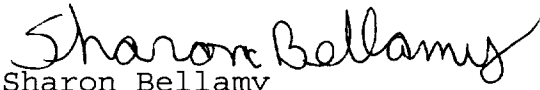
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HEARING DATE: January 7, 1999

LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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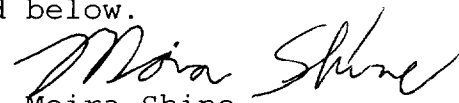
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